

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-6291

DARRELL L. FLEMING, SR.,

Petitioner - Appellant,

versus

RONALD J. ANGELONE,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Jackson L. Kiser, Senior District Judge. (CA-02-776-7, CA-02-856-7)

Submitted: April 24, 2003

Decided: May 2, 2003

Before NIEMEYER, GREGORY, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Darrell L. Fleming, Sr., Appellant Pro Se. Thomas Drummond Bagwell, Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Darrell L. Fleming, Sr., seeks to appeal the district court's order denying relief on his petition filed under 28 U.S.C. § 2254 (2000) on the ground that it was not timely filed. An appeal may not be taken to this court from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue for claims dismissed by a district court solely on procedural grounds unless the petitioner can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir.) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), cert. denied, 534 U.S. 941 (2001). We have independently reviewed the record and find that Fleming has not satisfied this standard. Accordingly, we deny a certificate of appealability and dismiss the appeal. See Miller-El v. Cockrell, 123 S. Ct. 1029, 1034, 1039 (2003). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED